

Issue: Use Tax On Purchases, Fixed Assets or Consumables
Use Tax Liability On Purchases (Non-Filer) 1981 Limit

1. The Department's prima facie case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Correction of Returns, showing a total liability due and owing in the

amount of \$2,228.00 (Dept. Grp. Ex. No. 5).

2. The taxpayer began operating in 1969. Beginning in 1990, the taxpayer began filing sales tax returns; prior to 1990, it charged tax on the selling price of the parts transferred with its service. (Dept. Ex. No. 7).

3. The taxpayer had purchase invoices for the last four years of the audit period (July, 1981 through December, 1990); 1987, 1988, 1989 and 1990. Beginning in 1990 the taxpayer began giving its suppliers a resale number and collecting tax at the time of service sale. No exceptions were found in this period, and this period was used in a block average to project back to July 1, 1981 and determine a liability. (Dept. Ex. No. 7).

4. The projection was based on the only records available and this constituted the best available information.

5. The taxpayer asserted that in the early years of the business; 1981, 1982, 1983, 1984, the amount of purchases were far less than those made in the years used in the projection. (Tr. at p. 16).

6. No documentary evidence, with the exception of an affidavit (Taxpayer Ex. No. 4) was proffered regarding the rate of inflation and growth of the taxpayer's business.

7. Relevant affidavits, pertaining to the specific audit period, had been excluded from the auditor's exceptions report. (Tr. at p. 23).

CONCLUSIONS OF LAW The Retailers' Occupation Tax Act, (Illinois Revised Statutes, Chapter 120, Paragraph 443) provides the following:

"As soon as practical after any return is filed, the Department shall examine such return and shall if necessary correct such return according to its best judgment and information, which return so corrected by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due as shown herein."

The statute has been strictly construed insofar as establishing a prima facie case is concerned, and the Illinois Courts have universally sustained a prima facie case based upon the corrected tax return. *Fillichio v.*

Department of Revenue, 15 Ill.2nd 327 (1985).

Once the corrected return is offered into evidence, there is a statutory burden placed upon the taxpayer to establish by competent evidence that the corrected return of the Department is incorrect, and until the taxpayer provides such proof, the corrected return is presumed correct. Masini v. Department of Revenue, 60 Ill. App.3rd 11 (First Dist. 1978). In order to overcome the presumption of validity attached to the Department's corrected return, the Taxpayer must produce competent evidence identified with its books and records in showing that the Department's returns are incorrect. Copilevitz v. Department of Revenue 41 Ill 2d 154, (1968).

The Taxpayer's reliance on oral testimony, rather than substantive documentary material on the issues of business expansion and inflationary trends, is not sufficient to warrant a finding that the burden has been met invalidating the assessment.

RECOMMENDATION It is my recommendation that Notice of Tax Liability No. XXXXX be finalized in its entirety.

William J. Hogan
Administrative Law Judge